

Via ECF

The Honorable Arun Subramanian
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St., Courtroom 15A
New York, NY 10007

February 4, 2025

Re: *United States, et al. v. Live Nation Entertainment, Inc., et al.*, No. 1:24-cv-3973-AS

Dear Judge Subramanian:

Plaintiffs submit this letter in response to Defendants' request to seal in whole or in part Exhibits A and C to Plaintiffs' Motion to Seal *Letter to Court re: Motion to Dismiss and Accompanying Exhibits*, ECF No. 408. Plaintiffs do not oppose most of Defendants' proposed redactions to Exhibit C. Yet both exhibits are "judicial documents" subject to a presumption of public access, and Defendants have not carried their burden as to some proposed redactions to Exhibit C or their request to seal the entirety of Exhibit A.

Exhibits A and C Are Both Judicial Documents Subject to a Presumption of Access.

To qualify as a "judicial document," a paper "must be relevant to the performance of the judicial function and useful in the judicial process." *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). Exhibits A and C are judicial documents because they respond to the Court's requests for elaboration about the facts alleged in the Amended Complaint and a proffer of additional facts that could be alleged in a Second Amended Complaint, should the Court grant leave for further amendment.

Plaintiffs submitted their January 25 letter to "address[] topics discussed at the [January 22] hearing." ECF No. 402. Among other topics, the Court asked Plaintiffs "to respond directly to the argument made [regarding the tying claim], as a factual matter, meaning not like the characterizations, but the actual facts" and to address if there was "something else" not alleged in the complaint so that the Court could consider whether to allow Plaintiffs to amend the Complaint "based on the parties' submissions." Hearing Tr. at 37:23–24, 38:8–13 (Jan. 22, 2025). Plaintiffs addressed these inquiries in their January 25 letter and accompanying exhibits by setting forth in more detail the facts underlying Plaintiffs' tying claim. Although the Amended Complaint contains sufficient allegations to state a tying claim, Exhibits A and C address questions from the Court about those allegations—and what kinds of additional allegations Plaintiffs could include in an amended complaint—in the context of a pending motion to dismiss. Thus, both exhibits qualify as filings "relevant to the performance of the judicial function and useful in the judicial process." *Amodeo*, 44 F.3d at 145.

Exhibit A shows on its face that an independent amphitheater (i.e., one not owned or controlled by Live Nation) contracted with a promoter (Live Nation) acting on behalf of a specific artist for a specific date. This example of disaggregated promotion services and amphitheater access provides additional factual context for the Amended Complaint's allegation

that promotion services and amphitheater access are “separate products,” including because “some industry participants, such as third-party operated amphitheaters, . . . only offer access to amphitheaters.” Am. Compl. ¶ 244.

Similarly, Exhibit C demonstrates additional information that Plaintiffs could use to reinforce their allegation that “[a]rtists . . . ultimately choose the amphitheaters where they will perform” and are therefore “the customers for provision of use of large amphitheaters,” even when they secure that use “through their chosen promoter.” Am. Compl. ¶ 208. Exhibit C shows Live Nation, as venue owner, denying amphitheater access to two specific artist clients who did not hire Live Nation for the specific shows at issue, in response to a promoter’s outreach on the artists’ behalf. The back-and-forth in the email chain demonstrates that the identity of the artist determined Live Nation’s decision. Thus, Exhibit C provides additional factual context for Plaintiffs’ allegation that Live Nation refuses to rent its amphitheaters to artists who choose non-Live Nation promoters. *See, e.g.*, Am. Compl. ¶ 113.

Defendants Have Not Justified Wholesale Sealing of Exhibit A and All Proposed Redactions to Exhibit C.

To justify sealing or redaction of a judicial document, a party “must make a particular and specific demonstration of fact showing that disclosure would result in an injury sufficiently serious to warrant protection.” *Ashmore v. CGI Grp. Inc.*, 138 F. Supp. 3d 329, 351 (S.D.N.Y. 2015). “[B]road allegations of harm unsubstantiated by specific examples or articulated reasoning fail to satisfy the test.” *Id.*

Defendants have failed to carry this burden with respect to Exhibit A because their showing is “broad” and “unsubstantiated.” *Id.* Defendants vaguely reference various kinds of “nonpublic pricing terms” that are “contain[ed]” in Exhibit A, and claim, without any substantiation, that disclosure of any portion of Exhibit A “could adversely affect” various and unspecified “relationships” among venues and promoters. ECF No. 415 at 2. That kind of boilerplate response is insufficient. Despite having more than the three business days provided by the Amended Protective Order to identify redactions, *see* ECF No. 347 ¶ 4, Defendants failed in their letter to identify which specific portions of Exhibit A reflect “nonpublic pricing terms,” ECF No. 415 at 2, contrary to the Court’s requirement that sealing “must be narrowly tailored to serve whatever purpose justifies” it, *Individual Practices* ¶ 11(B). And Defendants likewise failed to “make a particular and specific demonstration” of how disclosure of contract terms that were in effect more than three years ago “would result in an injury sufficiently serious to warrant protection.” *Ashmore*, 138 F. Supp. 3d at 351. At a minimum, the identities of the performances reflected in Exhibit A, which were events publicly promoted and advertised by Live Nation in 2021, are no longer confidential in 2025.

Plaintiffs do not oppose Defendants’ request to redact individual contact information for third parties in Exhibit C because it is purely personal information that does not relate to the issues presently before the Court. However, Defendants have not met their burden to redact from

Exhibit C the identities of the two artists to whom Live Nation denied amphitheater access. As discussed above, those identities are relevant here because those artists' affiliation with rival promoters was the basis on which Live Nation denied them access, which supports Plaintiffs' allegation that Live Nation's restrictive policy on amphitheaters applies directly to artists. This relevance defeats Defendants' only basis for redacting the names, *cf.* ECF No. 415 at 3 (relying on purported irrelevance).

Respectfully submitted,

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